

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to State of Delaware
Wildlife Regulation No. 3901: Definitions (2007)

DATE: August 13, 2007

I. Background:

A public hearing was held on Tuesday, July 31, 2007, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3901: Definitions (2007). This proposed action is needed to define the term “black powder” as it pertains to muzzle-loading rifles, and to provide clarity with regard to what the Division views as an acceptable propellant for muzzleloaders in Delaware, while providing options to hunters regarding this issue. Furthermore, this action is needed to create a definition for the term “deer”, so that hunters will be allowed to legally harvest sika deer and white-tailed deer during any and all of the established deer hunting seasons.

Numerous members of the public attended this hearing on July 31, 2007, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on July 31, 2007, Kenneth Reynolds, Program Manager with the Department's Division of Fish and Wildlife, offered the Department's exhibits pertaining to this regulatory promulgation, along with a brief explanation to the public with regard to the salient points of the proposed amendments to these regulations.

Mr. Reynolds explained to the attendees at this public hearing that, over the years, there have been changes in the propellants available for use in muzzleloading rifles. Due to the fact that the Department has never actually defined the term "black powder", there has been some confusion and concern with the public over this issue. Under this proposed amendment, the term "black powder" shall mean any manufacturer's approved muzzle-loading propellant. That will give muzzle-loader hunters a wider latitude now as to what they can legally use (and perhaps have already been using) in their muzzle loaders.

The other proposed change to the Division's Definitions Section is to create a definition for the term "deer". Until recently, the only deer species found in Delaware was the white-tailed deer (*Odocoileus virginianus*), so defining the term "deer" was not needed. Recently, however, sika deer (*Cervus nippon*) populations in Maryland have been expanding, and animals are dispersing into Delaware. Sika deer are an exotic animal that were introduced to James Island, Maryland, in 1916. Since these animals are not native to Delaware, the Department does not

want to promote their existence in the State. Potential human/sika deer conflicts, the potential for disease transmission, and competition with native white-tailed deer and other native wildlife are all reasons why sika deer populations should not be promoted in Delaware. By defining the term “deer”, hunters will be allowed to legally harvest sika deer and white-tailed deer during any and all of the established deer hunting seasons.

For brevity’s sake, and for the Secretary’s review, a copy of the Department’s proposed amendments to these regulations (listing all definitions to be promulgated in this regulatory action) is attached hereto as Attachment “A” and is expressly hereby incorporated into this report.

It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to Delaware’s Wildlife Definitions (Regulation 3901), and has thoroughly addressed all public questions and/or comments provided during the various phases of the record developed in this

matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. Promulgation of these proposed amendments would provide better understanding to the regulated community with regard to the actual defining of “black powder” and “deer” for Delaware hunters;
6. Promulgation of these proposed amendments would also provide additional means to discourage the growing population of sika deer, thus effectuating a reduction in potential human/sika deer conflicts, the potential for disease transmission, and competition with white-tailed deer and other native wildlife;

7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
8. The Department's proposed amendments to Regulation 3901 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

LISA A. VEST
Hearing Officer